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BY THE HOUSE OF DELEGATES,
March 2d, 1848.

Read and ordered to be printed.

REPORT

OF THE

MINORITY OF THE COMMITTEE

ON THE

CONSTITUTION.

REPORT.

The undersigned, a minority of the committee on the Constitution, to which were referred the bills relating to Conventional Reform, beg leave to submit the following report:

The undersigned deem it unnecessary to enter into an argument in this report, to reply to that offered to the consideration of the House by the majority of the committee, from whom has emanated the unfavorable report upon the bills relating to Conventional Reform, but they deem it a duty they owe to themselves and to the House to protest against some of the propositions advanced in said report, and at the same time to offer their views upon the whole subject, which has received at their hands much deep thought and consideration.

For the last twelve years the subject of Conventional Reform has been constantly agitated in this State; the people of Maryland from year to year, have besought the legislature to grant them the reforms necessary in the organic law of the State, but the legislature, like the frolicksome monkey, who lashed the cat to the barber's chair, for every new complaint only gave her a fresh gash. The State has at last become so afflicted by its many grievous sufferings, that it is confidently hoped, that this legislature will allow to the people the right to speak upon the subject of their afflictions.

The constitution, under which we now live was formed by a convention chosen for that purpose in September, 1776. The convention assembled at Annapolis, on the 14th August 1776, and a special committee of seven was appointed to prepare a constitution and form of government. That committee reported on the 10th September, 1777, and in the next month the report was adopted, and the form of government and bill of rights, so reported were made the organic law of the State, and were but slightly altered in their passage through the convention. Though there have been, at times, many amendments to the constitution by legal enactments yet there has never been a thorough reform of the organic law from the time of its adoption to the present hour.

This fundamental law established at a period of time, when the science of government was but little known, and when the State of Maryland was but thinly settled, has manifestly fallen far "behind the age." It is true it was formed by some of the purest and

most patriotic men of that day, and no doubt was well adapted to the times, in which it was produced. It may be also true that, at that time, the policy of the people of Maryland was to have such a form of goverment, but because it was expedient then, it does not follow that it is suitable now. The undersigned holds the true doctrine of a republican government to be in the happiness of the people, and that law which responds to the wishes of the greatest number is, for the time being, the best. They do not think, however, that because once adopted, it should never be changed. They are rather surprised at the sanctimonious reverence, with which the majority of the committee have looked at the constitution of Maryland, and deemed it, like the "ark of the covenant, too sacred to be touched." They ascribe to the men of the preceding age a wisdom more than human, and suppose what they did to be beyond amendment. But they are clearly wrong, for in government, the experience of forty years is worth a century of knowledge acquired by mere study. It is the policy of a republic to be constantly moving with the progress of the times. Machiavel observes and makes it a title to one of his discourses: "That a free government, in order to maintain itself free, hath need every day of some new provisions in favor of liberty." This has been the system even in the darker ages.

Frequent conventions of the States of Denmark, when that country was free, were a fundamental article of the Danish constitution. They consulted concerning matters of government, taxes, peace and war, and promotions to office. It was their province to suggest evils, which required remedies. This is the true policy of a republican government. The constitution is the political science of a nation, and the laws record its political experience—it becomes necessary by the progress of the times to embody the experience of a people with its organic law. The ablest writers upon the subject propose, that all American constitutions should be periodically revised and inspected, and that all those provisions, which are required by the changes, which will come by lapse of years in the people, for whose good, constitutions are framed and compacts entered into, should be engrafted upon the fundamental law of the government, in which it is in use. The present constitution of this State formed as before stated in 1776, has never been thoroughly revised, and the people now ask that it may undergo a reformation. Many and important changes have taken place within the last seventy years, not only in our own State, but in others of the Union. Many of the States, acting under the wise and just doctrine of Republicanism have remodelled and changed their organic law. It may not be out of place here, briefly to enumerate some of the States in which new or remodelled constitutions, have been adopted within the last few years.

A revision of the fundamental law of New Jersey, Louisiana, Missouri, Texas, New York and Illinois, have taken place within the four years last past.

The constitution of New Jersey, under which that State was governed until a few years since, was made in July 1776. It had never been altered, but was superceded by that adopted on the 29th June 1844.

The constitution of Louisiana was formed in 1812, and the new one came into operation in convention in May 1845.

In Texas, the constitution was adopted in convention in July 1845, and was approved by the people in October 1845.

The new constitution of Missouri was formed in convention in January 1846 to take the place of the old one, which was made in 1820.

Within the last two years New York has remodelled its whole organic law by means of a convention, and has adopted the new system in lieu of the old, which came into existence in 1821.

Illinois, too, has joined in the march of improvement, and has within the last year thoroughly revised its constitution.

In many other of the Western States the subject has been, and now is agitating the public mind. It will grow by time.

Apart then from the changes produced by time alone, we have the evidences of the alterations and reformations required and made in the forms of government of many of our sister States. It is apparent also, and a fact which none can deny, that the legislation of the past few years proves conclusively that many and important alterations are necessary to be made in the constitution of our State. It is not the purpose of the minority of the committee to enter into an extended enumeration of the reforms which appear to be most vitally important to the best interests of the people, but it is their desire, with laudable brevity, to call the attention of the House to those portions of the fundamental law which cry the loudest for reform.

Among the most important of these seems to be the reform in the Judiciary, or more properly in the administration of justice. The tenure by which the judges hold their office in this State, is certainly out of all consistency with the policy of free government. The judicial department, though it should be surrounded by safeguards and barriers, should by no means be entirely beyond the reach of accountability. This tenure for life has been abandoned in many of the States, and the terms of office have been made of such a length as to keep the judges still within the control of the people. The ground taken in favor of a life tenure is, that men will probably be party men, if appointed for a term of years, and liable to prejudices of a party character; but this argument is entirely fallacious—it would equally be urged against the appointment as it now stands—but the acts of this House within the last few days show that no such argument could be urged here. But a few days ago a bill passed this House, giving important equity jurisdiction in cases of property of deceased persons, to the justices of the orphans courts of this State, showing conclusively the confidence of the House in those who are thus appointed for a short period of two or three years. Again, the number of the judges

now on the bench is sadly complained of, and the unfairness by which their respective duties are divided and set apart; and a reference to the returns of the judges attendance for a few years past will show the injustice of the present distribution of their labors. As to the administration of justice, it is a fact beyond a question, that the delays which litigants are compelled to suffer, amount almost to a total denial of justice. The 17th article of the Bill of Rights declares that "every freeman, for any injury done to him in his person or to his property, ought to have remedy by the course of the law of the land, and ought to have justice freely without sale, fully without any denial, and *speedily without delay*, according to the law of the land." This is far from the case as it now is. For the most trivial causes, delays are made at every stage of a suit. Upon every request of favored or feared counsel, postponements or continuances daily take place, and it is almost impossible to get a case of any importance tried in all the courts of original and appellate jurisdiction in the space of six years. In addition to this, the enormous expenses which accrue even by reason of the very delay itself, often prevents an injured and suffering party from seeking a source from which a remedy should flow. It places before his eyes the saying of Lord Coke, "that no subject, however potent or subtle, ever jostled with the law, but it broke his neck."

Another great matter to which the serious thought of the minority of the committee has been given, is that of representation in the legislature, or at least in that portion where the financial affairs of the State are conducted, but it is not contemplated by the minority of the committee to discuss this subject, or to report upon it, inasmuch as the representation in the convention, proposed to be called by the bill before the committee, is fixed upon the same basis as that of the present General Assembly, but only for the purpose of connecting this subject with that all-important one of retrenchment.

The minority beg leave to deny the assertion of the majority that the debt under which the State is now groaning was contracted to a great extent, for the benefit of the city of Baltimore. The undersigned would most respectfully ask, if it has not been caused by the unwise legislation of past years in contracting immense debts for the purpose of carrying on great works of internal improvement, which have never realized the calculations or expectations of those who were scheming with visionary projects. These works which for years past have been almost stagnating in their complete stillness, have broken down the faith and credit of the State. Baltimore city has had no such *pleasing office* to perform, but on the contrary, she has borne and will bear taxation in all the branches of trade to keep high above dishonor and disgrace the credit and fair fame of the State. Yet with all this burden borne by her, and the immense amount of taxation paid by her, in that branch of the legislature, where the public purse is guarded, she has no greater representation than many of the counties in the State.

Again it were well to appropriate as much of the revenue of the State to the payment of the debts due by her, as can be cleared after paying well, but not enriching the officers employed in her government. Wherever exhorbitant salaries or revenues are received by public officers, it should be reduced, whether in county court clerks, registers of wills, &c., or in any other branch of the government.

Another important change desired in the present form of government is the right of election by the people of county court clerks, registers of wills, &c. The manifest absurdity in electing sheriffs, and not the officers above enumerated, needs no comment, it speaks for itself.

These are some of the striking reasons for reform; they are but few as here stated but it is only on account of the want of time and space to embody any more in this report. The undersigned feeling confident (as the cases hereinbefore enumerated will show) that many and great changes are absolutely required by the people, proceed now to make a report more particularly upon the bill submitted to their consideration, as a part of the committee on the constitution. The substitute also offered meets with their decided disapprobation. Were there not many other reasons for the formation of an opinion adverse to the substitute, the very fact of the length of time, which would be necessary to put such a bill in operation, would of itself be a sufficient reason for the condemnation of its provisions. The same rule applies to politics as to morals, that the difficulty of reform always increases in a direct ratio with the time it is delayed; procrastination increases the evil, and in the same proportion diminishes our capacity to resist it. The original bill provides for the call of a convention to reform the constitution or to frame a new one, provided a majority of the legal voters of the State decide in favor of such a convention, and this the undersigned deem to be the true and proper course. We want a convention for reform, not only the most powerful of all assemblies, but the wisest; made and compacted not only of men sound in morals, and well learned, but ripe in their judgments, selected from all parts of the State chosen with the free consent of the whole body politic of the State. Such was that most venerable ancient assembly of the Amphictyons, which was the general tribunal of Greece, for judging and deciding all controversies among the several States. There is nothing within the compass of human wishes, of which we might not assure ourselves, from the wisdom and virtue of such an assembly. Those who are opposed to conventional reform, argue that the power to alter or repeal the present constitution is confined *exclusively* to the legislature, and in support thereof they quote the 59th article of the constitution. Now if this were a new question, and one which had not received not only the discussions of wise and able men, but also that argument, which is most conclusive of all, that is, of facts, the undersigned might feel disposed to lengthen this report to answer such objections, but believing that the subject is familiar to all, it is

their design briefly only to refer to one or two reasons against them. In olden times in many of the other States of the Union, there could be made no changes in the organic law, but by a convention, and necessarily a great expense and delay was caused by such a call of a convention to make some trifling alterations in the constitution.

This was, no doubt, observed by those men who formed our constitution, and it was their effort as far as they were able to remedy this defect. It was also right that the fundamental law should really be stationary and unswayed by every change, in the minds of the few, but at the same time relief could be granted for small and annoying mischiefs. It was confided to them to produce such a system, and the result was the incorporation of the 59th article into the constitution. But can any reasonable man suppose, that the people, from whom of right originates the government, should have so tied their hands, to suffer forever under a system, which might become oppressive and tyrannical? Its absurdity is sufficient refutation of such an argument. The same argument was urged upon a similar provision in the old constitution of New York, and it was answered, as it now is—and the result proves it to have been completely overthrown.

Again say the anti-reformers, it would be dangerous to trust the people with such a work. Is this charge sustained by a single fact? Is it possible that a people, who calmly bear the reckless legislation of past yeas, which has placed upon them a debt of nearly fifteen millions of dollars, and yet who for the purpose of protecting the honor of their State, are ground down to the very earth by the severest of tyrants, taxation, and yet without a murmur bear it all, is it to be believed, that they cannot be trusted with the re-organization of their government? It is worse than an insult to such a patriotic people to utter such a charge against them. But without further discussing this question, the undersigned are of the opinion that in a free government the people are supreme, and have the right to govern themselves in such a manner as to promote the happiness and welfare of the whole. In support of this, the undersigned quotes the very same language of Judge Story, used by the majority in their report: Says that great and good man, "the conclusion to which we have arrived is, that a State constitution is no further to be deemed a compact, than that it is a matter of consent by the people binding them to obedience to its requisitions, and that its proper character is that of a fundamental law prescribed by the will of the majority of the people of the State (WHO ARE ENTITLED TO PRESCRIBE IT) for the government, and regulation of the whole people."

Thus then, an authority used by the majority of the committee is conclusive against the proposition, that the right of government is not in the people. Many authorities could be further cited in this regard, but the minority of the committee forbear to trespass further on the House, with this report. They are also aware that no abler exposition of this subject could be made than that al-

ready before the House, in the Inaugural Address of the present Governor of Maryland. Assured, that they have done but feeble justice to a subject fraught with so much interest to the State at this time, yet rejoicing in the cause of the people, reform, which they see fast advancing to a consummation, the undersigned respectfully submit this report.

WM. PINKNEY WHYTE,
J. S. OWENS.